

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM G. STEVENS,)
Plaintiff,)
)
v.) C.A. No. 04-11938-JLT
)
ROBERT HOWLAND, et al.,)
Defendants.)

MEMORANDUM AND ORDER OF DISMISSAL
FOR MASSACHUSETTS DEPARTMENT OF CORRECTION

For the reasons stated below, plaintiff is directed to submit a signed copy of the complaint within forty-two days and his claims against the Massachusetts Department of Correction are dismissed.

BACKGROUND

Plaintiff William G. Stevens, a civilly-committed person at the Massachusetts Treatment Center, commenced this action on September 3, 2004, by filing an application to proceed without prepayment of fees and a complaint naming certain directors and the Superintendent of the Center, as well as the commissioner of the Department of Correction and the Department itself. Stevens contends that his constitutional right to practice his Wiccan religion have been violated by defendants based on events occurring at the Center in January through June 2004. The complaint submitted Stevens is not signed by him.

ANALYSIS

I. The Court May Screen This Action

Section 1915 of title 28 authorizes federal courts to

dismiss actions in which a plaintiff seeks to proceed without prepayment of the filing fee if the action lacks an arguable basis either in law or in fact, Neitzke v. Williams, 490 U.S. 319, 325 (1989) (interpreting former § 1915(d)), or if the action fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Complaints containing claims based on indisputably meritless legal theories or factual allegations that are clearly baseless may be dismissed sua sponte and without notice. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992). Claims lack an arguable or rational basis in law when they are brought against a defendant who is clearly entitled to immunity, involve the infringement of a legal interest which clearly does not exist, or the Court lacks subject-matter jurisdiction to review the claims. See Neitzke, 490 U.S. at 327-328 (interpreting the former § 1915(d)); accord Denton, 504 U.S. at 32 ("clearly baseless" actions may be dismissed). Here, plaintiff's claims against the Massachusetts Department of Correction are subject to dismissal based on Eleventh Amendment immunity.

A. The Massachusetts Department of
Correction Has Eleventh Amendment Immunity

The Eleventh Amendment¹ bars suits against an unconsenting state brought by its own citizens as well as by citizens of another state. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). A suit against a state's agencies or departments is a suit against the state. Id.; Alabama v. Pugh, 438 U.S. 781, 782 (1978) (per curiam) ('There can be no doubt, however, that suit against the State and its Board of Corrections is barred by the Eleventh Amendment, unless Alabama has consented to the filing of such suit.'). The jurisdictional bar applies regardless of the nature of relief sought. Pennhurst, 465 U.S. at 100; Kentucky v. Graham, 473 U.S. 159, 167 n. 14 (1985) (citing Pugh) (unless a State has "waived its Eleventh Amendment immunity or Congress has overridden it, . . . a State cannot be sued directly in its own name regardless of the relief sought. "). The Department of Correction is a state agency created and organized pursuant to Massachusetts law. Mass. Gen. Laws ch. 27, § 1, et seq. (creating Department of Correction). Thus, plaintiff's claims against the Department of

¹The Eleventh Amendment to the United States Constitution provides that:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. Amend. XIV.

Correction are barred by the Eleventh Amendment and must be dismissed. Pennhurst, 465 U.S. at 100; Edelman v. Jordan, 415 U.S. 651, 662-663 (1974); cf. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989) (neither state nor its officials are "persons" for purposes of § 1983); Quern v. Jordan, 440 U.S. 332, 344 (1979) (Congress did not override state's Eleventh Amendment immunity in enacting § 1983); Brown v. Newberger, 291 F.3d 89, 92 (1st Cir. 2002) (there has been no unequivocal abrogation of the Commonwealth's 11th Amendment immunity).

II. Plaintiff Has Failed To Sign the Complaint

A party proceeding pro se must sign every paper filed by him in this Court. See Fed. R. Civ. P. 11(a).² The reason for this rule is that a pro se party's signature constitutes a certification to the Court that the party has submitted the

²Federal Rule of Civil Procedure 11(a) provides:

Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Fed. R. Civ. P. 11(a).

paper in good faith. Fed. R. Civ. P. 11(b).³ Further, a party's signature makes certain that persons named as parties in an action in which there is no lawyer actually have assented to the filing of an action in which they may be bound or have their rights waived. See Herrera- Venegas v. Sanchez-Rivera, 681 F.2d 41, 42 (1st Cir. 1982) (rejecting attempt of

³Federal Rule of Civil Procedure 11(b) provides:

Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Fed. R. Civ. P. 11(b).

non-lawyer prisoner to enter appearance as "paralegal counsel").⁴

An unsigned paper must be stricken unless omission of the signature is corrected promptly after being called to the attention of the party. Fed. R. Civ. P. 11(a); accord Duke v. Crowell, 120 F.R.D. 511, 513 (W.D. Tenn. 1988) (directing plaintiffs to file a copy of the complaint signed by each of them within 10 days or court would sua sponte strike the complaint); Hadlock v. Bechler, 136 F.R.D. 157, 159 (W.D. Ark. 1991) (dismissing complaint after attorney failed to remedy defect after notice). Stevens will be granted time to correct the defect in signature by filing a copy of the complaint bearing his signature but if he fails to timely comply with this order, his claims against the remaining defendants will be dismissed without prejudice.

CONCLUSION

ACCORDINGLY,

(1) Plaintiff shall file a signed copy of the complaint

⁴A non-attorney, pro se party may only represent himself and not any other person or entity and may not prosecute claims on behalf of another party. See, e.g., Feliciano v. DuBois, 846 F. Supp. 1033, 1039 (D. Mass. 1994) ("an individual who is not an attorney admitted to practice in this court cannot be allowed to represent any other person, any class, or other legal entity."); L.R. 83.5.3(c) ("A person who is not a member of the bar of this court. . . will be allowed to appear and practice before the court only in his own behalf.").

within forty-two days of the date of this Memorandum and Order or this action will be dismissed without prejudice; and

(2) Plaintiff's claims against the Department of Correction are dismissed based on Eleventh Amendment immunity
SO ORDERED.

Dated at Boston, Massachusetts, this 12th day of October, 2004.

/s/ Joseph L. Tauro
JOSEPH L. TAURO
UNITED STATES DISTRICT JUDGE